IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 523 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT
Versus
BACHUJI GALABJI THAKOR & ORS

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Appearance :
MR PRADIP D BHATE APP for Appellant

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 16/08/2007

ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE J.R.VORA)

1 This Appeal is preferred by the State under Section 378 of

the Code of Criminal Procedure against the judgment and order delivered by Special Judge, District – Banaskantha at Palanpur, on 21st of December, 2004, in Special Case No. 17 of 2003, whereby all the three present respondents came to be acquitted by the Trial Court for the offences punishable under Sections 504, 506(2) and 114 of the Indian Penal Code as well as under Section 3(1)(10) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2 According to prosecution case, complainant Rameshbhai Valabhai Harijan approached Deesa Rural Police Station on 23rd of November, 2002 with one written complaint and from the said written complaint, a crime came to be registered against the present respondents vide Deesa Rural Police Station C.R. No. I-251/2002 for the offences punishable under Sections 363, 366, 368, 376, 323, 504, 506(2) of the Indian Penal Code and for the offence punishable under Section 3(1)(10) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. According to the prosecution case, as revealed in complaint at Exhibit – 15, Babiben, sister of the complainant, was abducted by accused No.1 Bachuji Galabji Thakor on 31st of October, 2002 and thereafter on next day by intervention of other persons and by persuasion, Babiben returned to the house of the complainant. She made complaint against those accused about ill-treating her, but at that

that time, no complaint was filed by the complainant on account of fear. Thereafter, from 2nd of November, 2002, Babiben resided at her in-laws house at village Rasana. From there also, according to the complainant, accused No.1 attempted to kidnap Babiben and on 22nd of November, 2002, while Babiben was doing household works in her house at village Rasana at about 6.30 a.m. all the four accused in one jeep car kidnapped by force Babiben and she was confined some where and, therefore the complainant and his family members had been to the accused for release of Babiben and upon such request, the accused were provoked and refused to release Babiben and further gave abuses to the complainant and his family members. Accused also threatened them to kill and insulted their caste and, therefore, the complaint. After investigation by Kesarsinh Mansinh, ASI, Deesa Police Station, a charge sheet came to be filed against the accused for the offences punishable under Sections 504, 506(2) of the Indian Penal Code as well as for the offence punishable under Section 3(1)(10) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 to read with Section 114 of the Indian Penal Code. A charge was framed in the said Sessions Case No. 17 of 2003 by learned Special Judge, on 28th of July, 2004, vide Exhibit–9. All the four accused pleaded not guilty and, hence, the prosecution examined Rameshbhai Valabhai - complainant at Exhibit – 14; Lakhmanbhai Danabhai at Exhibit - 16; Arvindbhai

Laxmanbhai at Exhibit – 17; Shantaben Laxmanbhai at Exhibit 19; Dahyabhai Mulabhai at Exhibit – 20; Manubhai Valabhai at Exhibit – 21; Ishvarbhai Vaghabhai at Exhibit – 22; Kiritbhai Ramabhai at Exhibit – 24; Kesarsinh Mansinh at Exhibit – 30 and prosecution produced on record documentary evidence like complaint, occurrence report, etc. After the prosecution evidence was over, statements of each of the accused was recorded by the Trial Court, in which each of the accused denied in toto of the incident as well as the evidence recorded. After hearing the prosecution as well as defence, the learned Special Judge came to the above conclusion of acquitting of the accused from the above said charges and, hence, this Appeal by the State.

3 The learned APP Mr. Pradip D Bhate was heard in detail in respect of this Appeal at this stage. Record and Proceedings of the Trial Court are called for and the same is available with us and learned APP provided xerox copies of the testimonies and the documents produced.

4 At this juncture also we have gone through the evidence carefully and we have considered the vital features of the case. This is an acquittal appeal and, hence, the evidence recorded during the trial as well as the reasons assigned by the Trial Court for the acquittal are important factors, to be taken into consideration.

5 Having gone through the record, it clearly appears that alleged victim of the incident Babiben, for whom the present incident occurred, however, has not been examined by the prosecution. Other witnesses complainant Rameshbhai Valabhai – Exhibit – 16; PW Arvindbhai Laxmanbhai – Exhibit 17; PW Shantaben Laxmanbhai – Exhibit – 19; PW Dahyabhai Mulabhai -Exhibit – 20 and PW Manubhai Valabhai -Exhibit – 21 have not supported the prosecution case. PW Ishwarbhai Vaghabhai in his deposition at Exhibit – 22 though stated that the accused kidnapped Babiben from village Rasana, but according to witness he heard about kidnapping and except that he has no personal knowledge. He heard this fact from in-laws of Babiben and her husband. While other witnesses i.e. Manubhai Valabhai - Exhibit 21; Dahyabhai Mulabhai - Exhibit – 20 are the witnesses not fully supporting the prosecution case as witness Dahyabhai Mulabhai was declared hostile while PW Manubhai Valabhai stated that on 22nd of November, 2002, he heard from in-laws of Babiben that Babiben was kidnapped and accused insulted and abused the complainant and his family members. Complaint filed by complainant Rameshbhai Valabhai could not be proved as he was declared hostile on account of not supporting the prosecution case. PW Lakhmanbhai Danabhai, Exhibit – 16 father-in-law of Babiben stated nothing incriminating against the accused. PW Arvindbhai Laxmanbhai – Exhibit-17 husband

of Babiben stated that he came to know about the kidnapping of his wife only after two days of the incident and he came to know about the incident when Rameshbhai filed a complaint before the Police Station. Only that Babiben, on returning, stated that the accused had given threats to her. On the whole, this witness did not support the prosecution case and was declared hostile.

6 This is all the evidence of the prosecution witnesses.

7 PW Kiritbhai Ramabhai Parmar, examined by the prosecution at Exhibit – 24, is the Investigating Officer. As being In-charge Dy. S.P., he took the charge of the investigation. It appears that this witness appears to be In-Charge, Dy. S.P., at the relevant juncture but though he might have drawn the panchnama of scene of offence and recorded the statements of the witnesses, but the charge sheet of the case was filed by P.I., Deesa Police Station. It also appears from the record that panchnamas are also drawn by P.I., Deesa and the whole investigation was not carried out by concerned In-Charge Dy. S.P., PW Kiritbhai Ramabhai Parmar. According to Trial Court, almost all the witnesses have turned hostile and even the complaint could not be proved by the prosecution. Main witness Babiben could not be examined by the prosecution and, therefore, the prosecution miserably

failed to prove the charges against the accused.

8 We have also undertaken the exercise to appreciate the evidence and reasons assigned by the Trial Court. When we scanned the whole case, we found that there is no iota of evidence against any of the accused for the offences for which they were charged and for these reasons each of the accused was acquitted by the Trial Court.

9 This being Appeal against the acquittal, unless and until it is found that the reasons assigned by the Trial Court for acquittal are palpably wrong, erroneous and demonstrably unsustainable, even if second view is possible from the same evidence, no interference is permitted. Going through the evidence, it clearly appears that even no second view is possible from the evidence recorded by the Trial Court than the view taken by the Trial Court for acquitting the accused of the charges levelled against them. Even at this stage, after careful scrutiny, we do not find any merit in the present Appeal and, hence, the following order :

"Leave to Appeal refused. Appeal stands dismissed. "

(J. R. VORA, J.) (SMT. ABHILASHA KUMARI, J.)